

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005(b)(3)

Order No. 2009-A-0017

***PERSONALLY SERVED BY ENVIRONMENTAL
PROTECTION OFFICER***

Issued to:

Mr. Joseph S. Konrad, Jr.
Playtex Products, Inc. – Plant 1
Energizer Personal Care, LLC
50 N. DuPont Highway
Dover, DE 19901

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Dear Mr. Konrad:

This is to notify Playtex Products, Incorporated (“Respondent” or “Playtex”) that the Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found Respondent in violation of 7 Del. C. Chapters 60 and 63 and 7 DE Admin. Code 1302, *Delaware Regulations Governing Hazardous Waste* or (“DRGHW”). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent, a manufacturer and marketer of feminine, skin and infant care products, is a subsidiary of Energizer Holdings, Inc. (“Energizer”) in Energizer’s Personal Care division. Respondent is the owner and operator of Plant 1 (“facility”) located at 50 N. DuPont Highway in Dover, Delaware.

On September 4, 2008, Department representatives conducted a DRGHW Compliance Assessment at the facility. Though previously classified as a large quantity

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generator¹ of hazardous waste, the Department documented that Respondent was operating as a small quantity generator² of hazardous waste at the time of the assessment. The assessment revealed 14 violations of the DRGHW. Similar violations were observed during previous compliance assessments on July 20, 2005, and August 18, 2004.

On September 24, 2008, Notice of Violation 08-HW-22 ("NOV") was sent by certified mail to Mr. Joseph S. Konrad, Jr. The NOV identified the violations found during the compliance assessment and required Respondent to demonstrate compliance within 30 days from receipt of the NOV. The Department's certified receipt indicated that Respondent received the NOV on October 1, 2008. Therefore, compliance was required by October 31, 2008.

On October 8, 2008, the Department received a hand-delivered response from Respondent. Though Respondent corrected many of the violations identified in the NOV, Respondent failed to provide the necessary documentation to ensure continued compliance, as required by law.

On October 15, 2008, the Department issued a follow-up letter identifying the deficiencies in Respondent's response. On November 17, 2008, the Department received a hand-delivered response from Respondent that, upon review by the Department, satisfactorily demonstrated Respondent's efforts to ensure continued compliance.

VIOLATIONS

1. **Section 262.34(d)(5)(ii) of the DRGHW states in part:**

"(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm."

On September 4, 2008, SHWMB representatives observed that Playtex had not posted emergency information next to the telephone in three areas where hazardous waste is accumulated (the Old Treat and Tumble Room, the Tank Room and the Acid Scrubber Area).

¹ Playtex was classified as a large quantity generator of hazardous waste during the period from January 26, 2007 until June 25, 2008.

² Playtex records, on the date of the compliance assessment, indicate that the facility began operating as a small quantity generator on June 25, 2008.

Respondent violated §262.34(d)(5)(ii) of the DRGHW by failing to post emergency information near a telephone, which would allow for timely emergency response in the event of a spill or release of hazardous waste.

2. **Section 262.34(d)(4) of the DRGHW states in part:**

“(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section...”

Section 262.34(a)(3) of the DRGHW states in part:

“(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(3) While being accumulated on site, each container and tank is labeled or marked clearly with the words ‘Hazardous Waste’...”

On September 4, 2008, SHWMB representatives observed eight various sized containers of hazardous waste accumulated in the Tank Room, one 55-gallon drum of hazardous waste accumulated in the Acid Scrubber Area and 12 various sized containers of hazardous waste accumulated in the Hazardous Waste Storage Shed. Each of these containers was labeled with the words “Haz Waste.”

Respondent violated §262.34(a)(3) of the DRGHW by failing to properly label the above-referenced 21 containers of hazardous waste.

3. **Section 262.34(d)(2) of the DRGHW states in part:**

“(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

(2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176 and 265.178;”

Section 265.173(b) of the DRGHW states:

" (b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak. "

On September 4, 2008, the Department observed each of the following:

- a black substance leaking from two 1-gallon containers labeled "Haz Waste" in the Tank Room;
- a 55-gallon steel drum labeled "Haz Waste" with standing liquid on the lid of the drum in the Hazardous Waste Accumulation Shed;
- a 5-gallon metal bucket labeled "Haz Waste" sitting in the liquid, on top of the 55-gallon drum;
- used oily pads on top of the 5-gallon metal bucket;
- a 5-gallon bucket labeled "Haz Waste" next to the stacked containers in the Hazardous Waste Accumulation Shed;
- a black liquid, on both the wooden pallet where the stacked containers (referenced immediately above) sat, as well as on the floor of the built-in secondary containment system. At the time of the assessment, neither the Department nor the Playtex representatives were able to determine the exact location of the leak, but it did not appear to have dripped from the oily pads referenced above;
- a 50 kg. fiber container of hazardous waste accumulated in the Hazardous Waste Accumulation Shed. The bottom of the container was deteriorated and falling apart; and the lid was also deteriorated and pushed into the container, leaving the container open and the hazardous waste visible.

Respondent violated §265.173(b) of the DRGHW by storing hazardous waste in leaking or ruptured containers.

4. **Section 262.34(d)(2) of the DRGHW states in part:**

"(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

(2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176 and 265.178;"

Section 265.171 of the DRGHW states:

"If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part."

On September 4, 2008, the Department observed each of the following:

- a black substance leaking from two 1-gallon containers labeled "Haz Waste" in the Tank Room;
- a 55-gallon steel drum labeled "Haz Waste" with standing liquid on the lid of the drum, in the Hazardous Waste Accumulation Shed;
- a 5-gallon metal bucket labeled "Haz Waste" sitting in the liquid, on top of the 55-gallon drum;
- used oily pads on top of the 5-gallon metal bucket;
- a 5-gallon bucket labeled "Haz Waste" next to the stacked containers in the Hazardous Waste Accumulation Shed;
- a black liquid, on both the wooden pallet where the stacked containers (referenced immediately above) sat, as well as on the floor of the built-in secondary containment system. At the time of the assessment, neither the Department nor the Playtex representatives were able to determine the exact location of the leak, but it did not appear to have dripped from the oily pads referenced above;
- a 50 kg. fiber container of hazardous waste accumulated in the Hazardous Waste Accumulation Shed. The bottom of the container was deteriorated and falling apart; and the lid was also deteriorated and pushed into the container, leaving the container open and the hazardous waste visible.

Respondent violated §265.171 of the DRGHW by failing to transfer hazardous waste from a leaking container to one in good condition.

5. **Section 262.34(d)(2) of the DRGHW states in part:**

"(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

(2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176 and 265.178;"

Section 265.173(a) of the DRGHW states:

"(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

On September 4, 2008, the Department observed each of the following:

- a black substance leaking from two 1-gallon containers labeled "Haz Waste" in the Tank Room;
- a 50 kg. fiber container of hazardous waste accumulated in the Hazardous Waste Accumulation Shed. The bottom of the container was deteriorated and falling apart; and the lid was also deteriorated and pushed into the container, leaving the container open and the hazardous waste visible;
- an open 5-gallon poly bucket labeled "Hazardous Waste" in the Hazardous Waste Accumulation Shed.

Respondent violated §265.173(a) of the DRGHW by failing to store hazardous waste in a closed container unless adding or removing waste.

6. **Section 262.34(c)(1)(ii) of the DRGHW states in part:**

"(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste...in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste...provided he:

(ii) Marks his containers either with the words 'Hazardous Waste' or with other words that identify the contents of the containers."

On September 4, 2008, the Department observed six 1-gallon glass jugs used for the satellite accumulation of hazardous waste in the Quality Lab. These containers were not marked to identify their contents.

Respondent violated §262.34(c)(1)(ii) of the DRGHW by failing to properly label the above-referenced six hazardous waste satellite accumulation containers.

7. **Section 262.34(c)(1) of the DRGHW states in part:**

“(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste...”

On September 4, 2008, the Department observed a Karl Fischer analytical unit in the Quality Lab. The unit generates small amounts of waste methanol. The waste methanol is satellite accumulated in a closed, half-gallon glass container labeled “Hazardous Waste.” The Department observed, however, that the waste from the half-gallon glass container had been transferred to another 5-gallon poly jug, used for satellite accumulation, located in the cabinet beneath the adjacent hood.

Respondent violated §262.34(c)(1) of the DRGHW by accumulating hazardous waste in a container other than the container where the waste was initially accumulated.

8. **Section 262.34(c)(1) of the DRGHW states in part:**

“(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste...”

On September 4, 2008, the Department observed at least 75 gallons of hazardous waste accumulated in containers in the Quality Lab, a location considered to be a satellite accumulation area.

Respondent violated §262.34(c)(1) of the DRGHW by exceeding the 55 gallon accumulation limit in a satellite accumulation area.

9. **Section 262.11 of the DRGHW states in part:**

“A person who generates a solid waste, as defined in §261.2, must determine if that waste is a hazardous waste...”

On September 4, 2008, the Department observed a half-gallon safety can labeled “Used.” Playtex representatives were unable to determine the contents of the container during the assessment. On September 8, 2008, Playtex submitted documentation that it had determined the contents were hazardous waste.

Respondent violated §262.11 of the DRGHW by failing to make a hazardous waste determination at the time of initial waste generation.

10. **Section 273.14(a) of the DRGHW states:**

"A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: 'Universal Waste-Battery(ies)', 'Waste Battery(ies)', or 'Used Battery(ies)';"

On September 4, 2008, the Department observed two large lead acid batteries on a pallet in the Old Treat and Tumble Room. Facility representatives stated that the batteries were being managed as universal waste. Neither battery was labeled.

Respondent violated §273.14(a) of the DRGHW by failing to properly label the two above-referenced universal waste batteries.

11. **Section 273.15(c) of the DRGHW states in part:**

"(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by: ..."

On September 4, 2008, the Department observed two large lead acid batteries (classified as universal waste pursuant to §273.2 of the DRGHW) on a pallet in the Old Treat and Tumble Room. Facility representatives stated that the batteries were being managed as universal waste. Neither battery was marked with an accumulation start date, and Playtex was unable to demonstrate the length of time the batteries had been accumulated.

Respondent violated DRGHW §273.15(c) by failing to be able to demonstrate the length of time the two above-referenced universal waste batteries had been accumulated.

12. **Section 273.13(a)(1) of the DRGHW states in part:**

"(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and

must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions."

On September 4, 2008, the Department observed two large lead acid batteries on a pallet in the Old Treat and Tumble Room. Facility representatives stated that the batteries were being managed as universal waste. Both battery casings were cracked and damaged.

Respondent violated §273.13(a)(1) of the DRGHW by failing to properly contain the two above-referenced damaged universal waste batteries.

13. **Section 262.34(d)(2) of the DRGHW states in part:**

"(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

(2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176 and 265.178;"

Section 265.174 of the DRGHW states:

"The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. A written record of the inspections must be maintained onsite for a minimum of three years."

On September 4, 2008, Respondent was unable to provide documentation to the Department to confirm that its employees were conducting weekly inspections of the hazardous waste accumulation areas in the Old Treat and Tumble Room, the Tank Room and the Acid Scrubber Area.

Respondent violated §265.174 of the DRGHW by failing to conduct weekly inspections in areas where hazardous waste is stored.

14. **Section 122.1(c) of the DRGHW states in part:**

"(c) DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261."

Section 262.34(d) of the DRGHW states:

"(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate

hazardous waste on site for 180 days or less without a permit or without having interim status provided that: ...[the requirements of the Regulations for storage and management are met.]”

On September 4, 2008, the Department determined that by failing to comply with the labeling, storage, inspection and emergency information posting requirements for hazardous waste, as demonstrated in numbers 1, 2, 3, 4, 5 and 13, above, and by failing to meet the conditions for exclusion from the 180 day or less storage requirement, set forth in §264.34(d) of the DRGHW, Respondent was operating a hazardous waste storage facility without a permit.

Respondent violated §122.1(c) of the DRGHW by failing to obtain a permit for the storage of hazardous waste by failing to meet the conditions for exclusion from the 180 day or less storage, pursuant to §264.34(d) of the DRGHW, as demonstrated in violation numbers 1, 2, 3, 4, 5 and 13, above.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 Del. C. § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$10,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$1,500.00, pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit two checks to the Department in the amounts of \$10,000.00 and \$1,500.00 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty costs. The checks shall be made payable to the “State of Delaware” and shall be directed to: Valerie M. Satterfield, Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, 3rd Floor, 102 West Water Street, Dover, DE 19904.

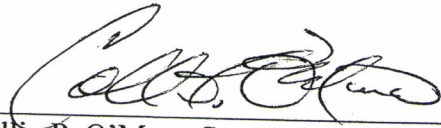
PUBLIC HEARING

This Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. § 6005(b)(3). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent’s facility, including but not limited to, the imposition of civil penalties and recovery of the Department’s costs and attorney’s fees pursuant to 7 Del. C. § 6005. The Department otherwise does not intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$10,000.00 and the Department's costs in the amount of \$1,500.00, in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment, which shall become a final Order. If you have any questions, please contact Karen J'Anthony at (302) 739-9403.

May 19, 2009
Date


Collin P. O'Mara, Secretary

cc: James D. Werner, Director
Valerie M. Satterfield, Deputy Attorney General
Nancy C. Marker, Program Manager II
Karen J'Anthony, Program Manager I
Melissa A. Ferree, Environmental Engineer III
Jennifer M. Bothell, Enforcement Coordinator
Susan S. Baker, Paralegal
SHWMB File

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WAIVER OF STATUTORY RIGHT TO A HEARING

Playtex Products, Inc., ("Playtex") hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. Playtex will pay the administrative penalty in the amount of \$10,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Valerie M. Satterfield, Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, Third Floor, 102 West Water Street, Dover, DE 19904; and
2. Playtex will reimburse the Department in the amount of \$1,500.00, which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Valerie M. Satterfield, Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, Third Floor, 102 West Water Street, Dover, DE 19904.

Playtex Products, Inc.

Date: _____

By: _____

Title: _____